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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,731	04/27/2001	Steven John Romme	659/789	1837

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EXAMINER

BRYANT, DAVID P

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 09/24/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/844,731	Applicant(s)	ROMME ET AL.
Examiner	David P. Bryant	Art Unit	3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 July 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 50-69 is/are pending in the application.

4a) Of the above claim(s) 50-56 and 64-69 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 57,58 and 62 is/are rejected.

7) Claim(s) 59-61 and 63 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

 * See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species B (readable on claims 57-63) in Paper No. 13 is acknowledged. **Claims 50-56 and 64-69 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.**

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 57, 58, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonk (U.S. Patent No. 4,535,912).

Claim 57: Bonk teaches a wet wipes dispenser 1 comprising an interior 10, a tray 3 situated in the interior, and a removable wiper 2. The interior is intended to house a container 4 of wipes 17. See Figures 1 and 5. In column 9 (lines 16-18), instructions are provided for refilling the dispenser with a container 4 of wipes, comprising removing the removable tray 3 from the dispenser and inserting the refill container into the interior.

Although Bonk teaches a dispenser having the structural features recited in the claims, and the steps for inserting a refill container of wipes into the dispenser, there is no explicit

teaching of determining the dimensions of a first dispenser, and using the dimensions to manufacture a container of wipes which will fit into the interior of the first dispenser, and then providing instruction to remove the tray from a second dispenser and to place the manufactured container into a second dispenser.

The above outlined steps not explicitly taught by Bonk are nonetheless well known in manufacturing; such a process is commonly referred to as "reverse-engineering." Since the claimed dispenser structure is known in the art, as evidenced by Bonk, the steps for "reverse-engineering" wipes refill containers would be obvious and well within the level of ordinary skill in the art, and would permit a manufacturer of such refill containers to profit from the often-required replacement of the consumable wipes product.

Claim 58: As disclosed in column 4 (lines 40-42) and column 5 (lines 12-30), the container 4 inherently provides a bacterial resistant seal in being formed from a vapor- and moisture-impervious plastic material that is heat-sealed around its periphery.

Claim 62: As depicted in Figure 1, the wiper 2 is removable from the dispenser 1. As disclosed in column 9 (lines 16-18), a refill container 4 of wipes 17 may be inserted into the dispenser by removing the removable wiper and inserting the refill container through upper opening 34 in the dispenser.

Allowable Subject Matter

Claims 59-61 and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Although the steps recited in the objected-to claims constitute a well known process of reverse-engineering, the particular structures for the tray and the dispenser (wherein they include a cooperating pin and opening) and the wiper and the dispenser (wherein they include a cooperating post and opening) are not taught or suggested by the prior art of record.

Response to Arguments

Applicant's arguments filed July 3, 2003, have been fully considered but they are not persuasive.

Applicant argues that even if it is known in the art to take the article (i.e. the wipes container 4) disclosed in Bonk and to apply reverse engineering, this would not teach or suggest all of the features claimed; specifically, there is no teaching in Bonk for *providing instruction* to remove the tray from a second dispenser and to place the container in the interior of the second dispenser. This argument is not persuasive. Bonk clearly discloses in column 9 (lines 16-18) the instructions for inserting a refill container of wipes into the dispenser. Clearly, the manufacturer of refill wipes containers would provide these instructions to the consumer so that the consumer can easily insert the refill into the dispenser. In fact, this providing of instructions has long been common on the packaging of wipes refills, in the form of simple text and/or diagrams.

Applicant also argues that there is no suggestion in Bonk that providing instructions for the replacement of a tray by a container would be an obvious teaching of reverse engineering. However, applicant appears to be relying on a specific feature for patentability that is not currently claimed. Claim 57 does not recite *replacing* a tray by a container, only (providing

instruction for) *removing* a tray and placing a container in the interior of the dispenser. Clearly, Bonk teaches this claimed feature in column 9 (lines 16-18).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **David Bryant** whose telephone number is **(703) 308-1859**. Draft

amendments or proposed changes to the application may be faxed directly to the examiner at any time via RightFAX at (703) 746-4213. The examiner can normally be reached on **Mondays-
Thursdays from 6:30 AM to 5:00 PM.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Petitions/Special Programs	(703) 305-9285
Terminal Disclaimers	(703) 305-8408
PCT Help Desk	(703) 305-3257

If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



David P. Bryant
Primary Examiner
Art Unit 3726